

HOUSE FINANCE COMMITTEE  
April 27, 2005  
8:46 A.M.

CALL TO ORDER

Co-Chair Meyer called the House Finance Committee meeting to order at [8:46:21 AM](#).

MEMBERS PRESENT

Representative Mike Chenault, Co-Chair  
Representative Kevin Meyer, Co-Chair  
Representative Eric Croft  
Representative Richard Foster  
Representative Mike Hawker  
Representative Jim Holm  
Representative Reggie Joule  
Representative Mike Kelly  
Representative Carl Moses  
Representative Bruce Weyhrauch

MEMBERS ABSENT

Representative Bill Stoltze, Vice-Chair

ALSO PRESENT

Rod Betit, President, Alaska State Hospital and Nursing Home Association, Anchorage; Pat Luby, Advocacy Director, Alaska Association of Retired Persons (AARP)

PRESENT VIA TELECONFERENCE

Ken Brewer, Fairbanks; John Bringhurst, Petersburg Medical Center, Petersburg; Kathy Dale, Anchorage; Ray Brown, Attorney, AATL, Anchorage; Roland Gower, Surgeon, Alaska Physician & Surgeons, Alaska Regional Hospital, Anchorage; Robert Sparks, Fairbanks; Tom O'Brien, Fairbanks; Valerie Nelson, Former Mayor/Assembly Member, Sitka; Terrie Gottstein, Anchorage

SUMMARY

CS SB 67(JUD)(efd fld)

An Act relating to claims for personal injury or wrongful death against health care providers.

SB 67 was HEARD and HELD in Committee for further consideration.

[8:48:06 AM](#)

SB67

CS FOR SENATE BILL NO. 67(JUD)(efd fld)

An Act relating to claims for personal injury or wrongful death against health care providers.

KENNETH BREWER, (TESTIFIED VIA TELECONFERENCE), FAIRBANKS, agreed that Alaska needs more good doctors and recommended better insurance rates for doctors and all Alaskans. He believed that the legislation was an "over-reaction". Alaska does not have the population base to support too many insurance companies. He urged that the \$250 thousand dollar insurance cap not be implemented. He mentioned his personal experience with a mis-diagnosis dealing with a Fairbanks doctor when his wife had lung cancer. He questioned why unqualified physicians are allowed to accept emergency patients. Placing a cap would not be the correct option and that it should not be allowed.

[8:57:46 AM](#)

DR. ROLAND GOWER, (TESTIFIED VIA TELECONFERENCE), SURGEON, ALASKA PHYSICIAN & SURGEONS, ALASKA REGIONAL HOSPITAL, ANCHORAGE, addressed concerns regarding insurance premiums existing throughout Alaska. He acknowledged that Alaska is in a crisis mode and mentioned that physician's insurance premiums have doubled over the past three years. Normally, those costs are passed on to the patients, which drives up the costs of medical insurance.

Dr. Gower pointed out statewide concern regarding availability of medical care in Alaska and will become more of an issue if the malpractice component is not addressed.

[9:01:06 AM](#)

Dr. Gower disagreed with legislative research indicating there is not a statewide shortage of doctors. At present, doctors going on vacation must hire someone to come from out of state during that time. He added concern that over half of the State's practicing physicians are now over 50 years old and with the difficulty of insurance and premiums, some of those physicians will consider retirement. Limiting risks include "going bare" and could mean no longer treating breast cancer. He said he personally treats over 100 breast cancer cases a year and that some risks will no longer be tolerated.

Dr. Gower stressed that consideration of the legislation is a crisis choice.

[9:06:24 AM](#)

JOHN BRINGHURST, (TESTIFIED VIA TELECONFERENCE), ADMINISTRATOR, PETERSBURG MEDICAL CENTER, PETERSBURG,

commented on his history in the medical care reform system movement. He highlighted concerns occurring in Alaska:

- Shortage of physicians
- Loss of services
- Unavailability of coverage

Mr. Bringhurst pointed out that the need for tort reform has reached a crisis phase across the nation. He urged the Legislature to consider those needs.

[9:09:32 AM](#)

KATHY DALE, (TESTIFIED VIA TELECONFERENCE), SELF, ANCHORAGE, noted that she and her family were victims of malpractice. She pointed out it is difficult to bring a case against a medical professional. The bill limits the victim's ability to sue medical professionals when they are negligent. She noted economic damages resulting for those families. In Alaska, there are already existing caps. She stated that if the proposed cap of \$250 thousand dollars is adopted, citizens of Alaska would be robbed of "their day in court". The \$250 thousand dollar cap is not satisfactory. She urged that the bill not be moved forward.

Ms. Dale pointed out that the increased costs in medical premiums over the past few years, has resulted from the stock market crash. The market is recovering but the premiums have not yet been reduced. She said insurance companies were pocketing the extra money. California and Texas both have the \$250 thousand dollar cap. California's cap was established in 1976 and the overall medical malpractice premiums there have decreased drastically following the adoption of that cap; however, rates were not regulated until 1988 through the adoption of Proposition #103. An insurance crisis resulted from the move happening in California in 1976. A similar situation resulted in Texas.

Ms. Dale pointed out that only patients with large wage losses or huge medical bills are typically able to find attorneys in California. She urged that the House Finance Committee not to pass the bill out of Committee.

[9:15:19 AM](#)

RAY BROWN, (TESTIFIED VIA TELECONFERENCE), ATTORNEY, ANCHORAGE, noted that he is one of the few attorneys that actually litigates these type of cases. He pointed out that his firm screens approximately 200 allegations of medical malpractice a year. Of those cases, the firm takes between 5-7 cases following a rigorous and exhausting screening routine. These claims are not filed furiously; it is very expensive to get a case to trial.

Mr. Brown questioned why the premiums are so high if medical malpractice cases are not occurring. He stressed the need for insurance revision. He maintained the legislation does nothing to solve medical malpractice issues. Mr. Brown asked why California rates are not lower than Alaska's. He maintained the legislation will negatively affect everyone and that it eliminates children from bringing forward claims. SB 67 would immunized grossly negligent doctors.

Mr. Brown pointed out that a 70% disability would have no effect bringing claims onto the individual physicians. It would increase the litigation costs in all cases. It would also provide additional defense against women, rendered sexually dysfunctional after malpractice suits. It would not protect children disfigured from burns and facial scars.

Mr. Brown urged reconsideration of the bill. The bill is a public policy issue affecting the most vulnerable of our society.

[9:23:21 AM](#)

ROBERT SPARKS, (TESTIFIED VIA TELECONFERENCE), FAIRBANKS, summarized that there is a malpractice crisis statewide, not a lawsuit practice. He commented on injured victims of malpractice. He worried that the important objective evidence was not being considered. Hospitals and doctors need to have systems in place to work to reduce medical errors. In the current system, people injured are able to recover damages from the person that injured them. He warned about not being able to hold doctors accountable.

Mr. Sparks pointed out that some of the worst malpractice occurrences are witnessed within the Veterans Administration (VA) system.

Mr. Sparks stressed that statistics have been over-blown and that the facts provided by the medical industry are questionable. He addressed insurance premiums and the tort reform system, summarizing that the legislation would make Alaskans vulnerable to insurance companies.

[9:28:24 AM](#)

TOM O'BRIEN, (TESTIFIED VIA TELECONFERENCE), FAIRBANKS, spoke in opposition to the legislation. He shared a personal perspective of concerns having been a victim of malpractice, himself. As a victim, many people must live a more alternative lifestyle. It will be only those in the higher income brackets that will be able to receive representation in the future, if the bill passes. He mentioned the need to be able to demonstrate high earnings. If a victim were hit with medical negligence, they might not

be able to demonstrate economic stability. He emphasized that it is very difficult to gain representation by a qualified malpractice attorney. Those attorney's must be thorough. With passage of the legislation, the victim would not have any opportunity to have "their day in court".

He believed that the current system is "good and the caps are adequate". He urged that members question the rights of the victim. Mr. O'Brien maintained that the legislation will create a huge burden for all victims.

[9:32:19 AM](#)

VALERIE NELSON, (TESTIFIED VIA TELECONFERENCE), ASSEMBLY MEMBER, FORMER MAYOR, SITKA, outlined her concerns with passage of SB 67. She explained that she is a breast cancer survivor, interjecting that damages due to negligence are humiliating for the patient. She pointed out that not only doctors are faced with increased insurance costs and that the charges are being raised for everyone in every profession.

[9:35:03 AM](#)

TERRIE GOTTSTEIN, (TESTIFIED VIA TELECONFERENCE), ANCHORAGE, urged that members vote against SB 67. She was disturbed that the insurance companies are the guilty parties. Malpractice insurance rates should be more focused on the insurance industry. She mentioned doctors with good risk records. To reduce medical malpractice insurance rates, the Legislature should mandate that the medical malpractice insurers "experience-rate" all doctors. She believed that action could provide incentives for careful care.

Ms. Gottstein elaborated that she opposed the bill, as it would limit an injured person from having their day in court. She recommended that cases of negligence be exempted. The standard of negligence should be high and should be punished.

[9:38:43 AM](#)

PAT LUBY, ADVOCACY DIRECTOR, ALASKA ASSOCIATION OF RETIRED PERSONS (AARP), JUNEAU, acknowledged that mistakes happen. He stated that the issue of medical malpractice is often perceived as a battle between trial lawyers and insurance companies and physicians. AARP thinks that it is also important to consider the victim of malpractice as well as the ultimate goal of medical error reduction. AARP believes that State Legislature should not place limits on the amount of damages or on joint and severe liability, or unreasonable limits on damage awards for pain and suffering. A cap of \$250 thousand dollars is unreasonable.

Reducing medical errors is in the best interest of all Alaskans and is the real intent of SB 67. AARP encourages the House Finance Committee to amend the bill to reflect the recommendations of the Institute of Medicine for fair compensation and error reduction.

[9:41:28 AM](#)

ROD BETIT, PRESIDENT, ALASKA STATE HOSPITAL AND NURSING HOME ASSOCIATION, ANCHORAGE, provided an overview of his handout: "Testimony by the Alaska Medical Injury Compensation Reform Act of 2005". (Copy on File).

Mr. Betit addressed concerns for an adequate number of doctors within the State. He stated that ASHNHA's members strongly support SB 67. Passage of the bill is important to protecting Alaskan's access to needed physician care. The bill changes only one aspect of the medical liability laws, the area dealing with non-economic damages. Alaska has a per capita shortage of physicians right now and the situation is expected to get worse. The situation is even more serious in rural areas of the State.

Mr. Betit continued, the population forecast for Alaska versus expected growth in physicians adds even more concern to the picture. He observed population growth facts:

- The total population of Alaska is projected to grow 28% by 2020, which is in addition to 62% growth between 1980 and 2000.
- The population over 65 is projected to grow 109% by 2020. That is in addition to a 229% growth in that age group between 1980 and 2000.
- In 1998, Alaska ranked 47<sup>th</sup> in the number of hospital beds per 100,000 population and 49<sup>th</sup> in the number of nursing home beds for people 65 and older. Yet Alaska will be experiencing the greatest growth rate in the age group that most requires services in the complex environments dependent on a wide range of physician specialists.

[9:48:13 AM](#)

Mr. Betit referenced Page 3 - Other Aspects to the Physician Shortage:

- Limiting Practice; and
- Use of "locum tenens".

Mr. Betit concluded, Alaska is already experiencing serious trouble retaining and attracting physicians, and the situation will get worse without intervention by the

Legislature to help stabilize the medical liability market. Growth in Alaska's population, particularly the elderly, will far outstrip growth in the number of physicians available to meet that need.

[9:49:58 AM](#)

Representative Holm asked if providing proper medical care in Alaska resulted from a lack of qualified physicians and how SB 67 would attract those physicians. Mr. Betit did not know. He pointed out that Alaska does not have a lot going on to attract doctors. There are no medical schools and only has a small residency program. Prospective doctors do make malpractice considerations.

Mr. Betit pointed out that Alaska has made an effort to increase graduating nurses. He believed that the nurse situation will be improving.

[9:53:13 AM](#)

Representative Holm maintained that there should be a more definitive answer regarding how many more doctors would be drawn to Alaska with passage of the bill. He thought that it would minimize the option for injured people to get adequate compensation. Mr. Betit disagreed, suggesting that the bill would attract more doctors to the State.

[9:54:08 AM](#)

Representative Croft asked if insurance would increase for doctors based on the claim-expense. Mr. Betit did not know the insurance rating system. Representative Croft requested more information on that.

Representative Croft asked how the figure of \$250 thousand dollars had been determined, to make Alaska competitive. Mr. Betit explained that the attempt was to determine a balance and that \$250 thousand dollars is the amount used by some other states.

Representative Croft asked if it should be indexed for inflation or if it would also be the correct number in 20-years. Mr. Betit responded that it should not be indexed; however, could be something the Legislature considers as needed.

[9:56:07 AM](#)

Representative Croft requested more follow-up information.

[9:56:58 AM](#)

Co-Chair Meyer noted that the bill would come back before the Committee at the afternoon meeting. He requested that Senator Seekins, Sponsor, be present.

9:57:30 AM

Representative Kelly requested that his amendment be brought forward during the afternoon session with Senator Seekins present.

CS SB 67(JUD)(efd fld) was HELD in Committee for further consideration.

#

ADJOURNMENT

The meeting was adjourned at 9:58 A.M.